IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1535 OF 2005

Naseer Gulam Mohamad Shaikh ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mrs.Anita A.Agarwal for Applicant.

Mr.A.S.Gadkari, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

MARCH 14, 2005.

P.C.

1. Heard Counsel for the parties. Perused the Application.

2. The Applicant is arrested in connection with C.R.No.306 of 2004 registered at Satara City Police Station for offence under Section 302, 342, 364, 324, 201 read with Section 34 of the Indian

Penal Code.

3. There is evidence in the shape of statement of the deceased and dying declaration recorded before the Judicial Magistrate. Insofar as the material facts are concerned, there is consistency in both the statements implicating the Applicant in the commission of the crime. This evidence is corroborated by the statement of eye-witness Abbas Shaikh, who was also present on the scene of offence.

4. The argument that 26% burn injuries caused to the Applicant have not been explained by the prosecution or that prosecution owes explanation as to how statement of deceased recorded by the Police as well as before Judicial Magistrate is at the same time, is a matter for trial. For the present, suffice it to observe that there is direct evidence to indicate complicity of the Applicant in the commission of the crime. Besides, it is brought to my notice that the Applicant is involved in other criminal cases pending against him being C.R.No.81

of 2001 and C.R. No.32 of 2001, which are cognizable and non-bailable offences. In other words, while on bail, the Applicant is alleged to have indulged in the present offence. Even on this reasoning, no indulgence can be shown to the Applicant.

5. I am conscious of the fact that co-accused has been released on bail, but as rightly observed by the lower Court, there is sufficient material to indicate the complicity of the Applicant and therefore, the Applicant is not entitled for parity. Hence, dismissed.

6. At this stage, Counsel for the Applicant submits that the Applicant is also suffering from heart ailment. If it is so, the jail authorities are directed to provide necessary medical aid to the Applicant, and if the aid available in the jail Hospital is not adequate, on certification by the attending doctor, appropriate medical facility be provided to the Applicant, if required, in a private hospital at his cost.

7. As prayer for bail is rejected, the Sessions Judge, Satara, is directed to assign the trial to the Fast Track Court to ensure early disposal of the trial as ‘High Court Expedited Case’.

8. Application disposed of on the above terms.

A.M.KHANWILKAR, J.